# COMMISSION ON CONFLICT OF INTEREST

## ANNUAL REPORT 1988-89

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**Commission on Conflict of Interest**
**Commission sur les conflits d'intérêts**

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April 1, 1990

**The Honourable Hugh Edighoffer**
**Speaker of the Legislative Assembly**
**Room 180, Legislative Building**
**Queen's Park**
**Toronto, Ontario**
**M7A 1A2**

**Dear Mr. Edighoffer:**

**It is an honour and a pleasure to present the First Annual Report of the Commission on Conflict of Interest for the period September 1, 1988 to December 31, 1989.**

**This Report is submitted pursuant to section 11 of the *Members' Conflict of Interest Act, 1988*.**

**Yours very truly**

Gregory T. Evans

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# COMMISSIONER'S MESSAGE

*The Honourable Gregory T. Evans*

In presenting the First Annual Report of the Commission on Conflict of Interest, I wish to express my appreciation to the members of the Legislature for their cooperation in fulfilling their obligations under a new law which involves an invasion of their privacy.

Bill 1, *An Act respecting Conflicts of Interest of Members of the Assembly and the Executive Council (Members' Conflict of Interest Act, 1988)* received third reading on February 9, 1988 and was given Royal Assent on February 11, 1988. In accordance with section 20 of the *Act*, the Lieutenant Governor proclaimed the *Act* on September 1, 1988.

As stated by the Attorney General in introducing the Bill:

> *"The fundamental premise is that members are committed to serving the public interest. The aim of legislation on this subject is primarily to set standards by which members can measure their conduct (and be measured) and from which they can gain assurance that compliance will protect their integrity. From this perspective, the intent of the law is facilitative; that is, to assist members in the performance of their duties and obligations."*

When I was appointed by Order-in-Council on June 29, 1988, there was no office or staff. My predecessor, the acting interim Commissioner, The Honourable John B. Aird, O.C., Q.C., was kind enough to offer the use of his offices and the assistance of two lawyers on staff, Mr. Eldon J. Bennett and Mr. Robert Spence. Their familiarity with the previous guidelines issued to Members of the Executive Council greatly facilitated the commencement of my immediate challenge, which was to review all private disclosure statements filed for 1988 and interview the 130 members of the Legislative Assembly.

In addition, a considerable amount of time was spent on administrative matters -- locating suitable accommodation for the office that would be easily accessible and yet separate from Queen's Park, designing an office layout, purchasing office equipment and furniture, and working on budget proposals. On November 1, 1988, the Commission obtained temporary office space on the 4th Floor, 101 Bloor Street West, Toronto. In July, 1989, a permanent office was established at the same address.

My primary duty is to render assistance to the members of the Legislature in outlining their obligations under the conflict legislation; assisting in the identification of areas of possible conflict of interest and providing advice to prevent the situation from developing or resolving it if it has occurred; and investigating complaints made in conformity with the *Act* when there is a sufficient basis to believe that a breach of the *Act* may have occurred.

A secondary duty is an educational one. Members and their spouses are being required to give to the Commissioner complete information relative to income, assets, financial interests and liabilities. This requirement is standard in almost all conflict of interest legislation. It assists the Commissioner in monitoring any substantial increase in assets when the disparity is grossly excessive in relation to disclosed income. It also provides information as to the member's creditors and debtors. Some of that information will subsequently be made public. The public disclosure obligation is an invasion of the right to personal privacy of the member and his immediate family. That important right and the competing considerations of public accountability and the public's interest in those who represent them in public office, must be kept in proper balance and perspective. A high degree of confidentiality is absolutely necessary if the members are to respect the integrity of the Commissioner's office. Without mutual respect, the conflict of interest legislation cannot succeed.

I have determined that confidentiality can best be achieved by employing a small staff of competent and discreet employees. At present, our office staff comprises my Executive Assistant, Miss Lynn Harris, and a part-time secretary. Miss Harris was my private secretary for six years during my tenure as Chief Justice of the High Court. Upon my retirement from that office, she held the position of Executive Assistant to the Chairman of the Workers' Compensation Appeals Tribunal for three years, until her appointment as my Executive Assistant in November, 1988. The competency and reliability of these two individuals ensures that Commission files and any disclosure by the members will remain confidential.

Like most new legislation, a trial period is required to work out unanticipated problems. After sixteen months responding to 63 inquiries and filing two annual Disclosure Statements, I have made some suggestions to Legislative Counsel for consideration as possible amendments to be submitted to the Legislature. Many are of a housekeeping or editorial nature, while others are of a more substantial nature.

The question of disclosure, and particularly public disclosure, is a very sensitive issue which brings into focus the limit to which individual rights in a well ordered democratic society may be properly restricted. I appreciate the problem and to the extent that the legislation allows me any discretion, I will exercise it in favor of protecting the right of privacy.

## BACKGROUND TO LEGISLATION

The purpose of our legislation is to restore and maintain public confidence in the integrity of our elected representatives to the Legislature.

Recent developments in many jurisdictions have disclosed situations involving elected representatives which indicate a course of conduct by a few individuals which tend to bring our system of government into disrepute. The result of this misconduct is to cast suspicion unfairly upon others in government who are not involved. Most misconduct is the result of inattention or an honest error in judgment; while some conduct may amount to a breach of the *Legislative Assembly Act* or the *Criminal Code of Canada*.

Voluntary guidelines have not proved effective and while it may be impossible to legislate morality, an effort had to be made to provide a legislative framework to protect the public and the legislators. The present legislation is an attempt to balance the need to maintain high standards of ethical conduct in the public service without unduly inhibiting people of outstanding ability in the private sector from seeking public office.

In 1972, the then-Premier, William Davis, implemented guidelines for conflict of interest for Ministers, which were overseen by a civil servant. These guidelines were found to be inadequate for a number of reasons; guidelines are vague, imprecise and, at times, even self-contradictory, and compliance is often a question of interpretation. Given these deficiencies, the monitoring of these guidelines and the compliance of Ministers was a most difficult task which fell unfairly to a career civil servant. In addition, the disclosure form which was developed from the inadequate guidelines was by nature, deficient and in some cases, misleading.

In 1985, the guidelines were revised and reissued; however, in 1986, the Premier of Ontario, David Peterson, recognizing the importance of continual review and up-dating, stated:

> *"A lot of businesses are involved with government in some way or other in the normal course of events, and the genius in drawing these guidelines is to protect the public interest. That's the number one concern: protect the public interest and prevent individuals in the Cabinet or anyone else from making decisions where they put their private interest ahead of the public interest."*

What was required was a system which both enables and requires the Ministers and their spouses to make informed and scrutinized disclosure.

Throughout 1986, several Committees looking into the affairs of members concluded that guidelines "impose neither adequate nor clear obligations and restrictions on ministers of the Crown." One Committee considered whether new conflict of interest provisions should take the form of legislation or remain guidelines.

Ontario at that time, was the only provincial jurisdiction which had not enacted conflict of interest legislation, although the *Ontario Legislative Assembly Act* contained limited and selective provisions relating to conflict of interest. Some of the recommendations flowing from these hearings include,

(1) The guidelines must be replaced by legislation or regulations under appropriate existing legislation.

(2) The role and plain meaning of new conflict of interest provisions should be clarified to allow for unequivocal interpretation and advice.

(3) Appropriate and effective mechanisms for interpretation, enforcement and monitoring of provisions should be developed. With respect to interpretation, responsibility for providing advice to Ministers should be vested in a non-partisan and independent advisor.

(4) The imposition of an arbiter should not remove responsibility for compliance from a Minister nor relieve the Premier of his obligation to monitor compliance. The necessity for responsible government with regard to compliance should not in any way be diminished.

As well, one of the Committees expressed their views that:

> *"...Any new rules should reflect a sensitivity to the public trust which each of us holds. There can be neither the possibility of personal gain nor the appearance of personal gain for any member of the Legislature while attempting to discharge his or her duties."*

In a Report on Ministerial Compliance with the Conflict of Interest Guidelines and Recommendations with Respect to those Guidelines, submitted by the Honourable John B. Aird, O.C., Q.C., dated September 24, 1986, he stated:

> *"The present Guidelines are clearly inadequate to achieve what I perceive to be the principal goal of any conflict of interest regime, i.e. public confidence that government office is not used for private gain. Ultimately, the integrity of our political system rests on the honour of elected officials and no legislative scheme can itself guarantee against dishonourable conduct. The primary bulwark against dishonesty in government is, in my view, exposure to public scrutiny of the affairs of those who govern. The current disclosure requirements are inadequate to achieve that goal...*
>
> *I accordingly make the following recommendations:*
>
> *(i) The present Guidelines should be replaced by the enactment of ministerial conflict of interest legislation..."*

And finally, in a Report on the Report on Ministerial Compliance with the Conflict of Interest Guidelines and Recommendations with Respect to those Guidelines (The Aird Report) by the Standing Committee on the Legislative Assembly, December 1986, it was recommended:

> *"(1) That the Government introduce conflict of interest legislation...*
>
> *(2) Conflict of Interest legislation should include not only Cabinet Ministers but also ordinary Members of the Assembly; however, the rules governing the conduct of*

*ordinary Members should be appropriately designed to cover their particular duties and obligations.*

..."

Legislation was passed on September 1, 1988.

## MANDATE

The mandate of the Conflict of Interest Commissioner is to advise, investigate, educate and administer an ethical code of conduct for all members of the Legislature. The establishment of the office may be viewed as a significant step in reassuring the electorate of the integrity of the Legislature and of the Government in an effort to improve and maintain public confidence in our system of government.

The office is a decision-making tribunal. The purpose is to assist the members of the Legislature in keeping the public interest in the forefront against which the individual member's right must be weighed.

The duties which the Commissioner performs are many and varied and include:

- inform members of the provisions of the *Act*;
- advise whether a breach of the *Act* is likely;
- review Private Disclosure Statements and question members with respect to same;
- obtain records of valuation of certain assets and liabilities;
- prepare Public Disclosure Statements and file with the Clerk of the Legislative Assembly;
- conduct inquiries, report, and make recommendations to the Speaker of the Legislative Assembly;
- conduct inquiries and report to the Executive Council;
- file an Annual Report with the Speaker of the Legislative Assembly;
- make regulations to the *Act* as required.

## REPORTING PERIOD

The Commission was proclaimed in effect on September 1, 1988, however, it was January, 1989 before it could be said to be operational at any significant level. The main effort was the filing in January of the 1988 Public Disclosure Statements together with a great deal of organizational activity.

Because an annual report in the traditional format would report as of the end of March, 1989 -- the end of the Commission's 1988/89 fiscal year -- it would in these circumstances cover only the first seven months of the Commission's effective operating period. A seven-month reporting period in this case would not provide meaningful data and would serve little purpose in assessing the Commission's developing nature and potential.

In response to these considerations, this Annual Report has been written covering the first sixteen months of the Commission's existence, September 1, 1988 to December 31, 1989. It is planned that the Second Annual Report will cover the next fifteen months, January 1, 1990 to March 31, 1991, and the Third Annual Report will revert to the traditional format and will cover the Commission's 1991/92 fiscal year.

# PRACTICE AND PROCEDURE

## A. DISCLOSURE

Within sixty days of being elected, and thereafter annually, the *Act* provides that every member must file a **Private Disclosure Statement** with the Commissioner. This Disclosure Statement contains detailed information with respect to the income, assets, liabilities and financial interests of the member, the member's spouse, minor children and private companies controlled by any of them. As the *Act* was proclaimed on September 1, 1988, the Commission has determined that information contained in the Disclosure Statements should be yearly as of September 1st.

The required Disclosure Statements are forwarded to all members and they are requested to return the completed version to the Commission by September 30th.

Upon receipt of the completed Disclosure Statements, the information is reviewed. A meeting is then arranged with the member, and the member's spouse, if available, to review and discuss the Statement. During the meeting, the Commissioner may seek further particulars from the Member and he will also advise the Member as to his responsibilities under the *Act*.

After the meeting, the Commissioner prepares a **Public Disclosure Statement** containing the information provided by the member, with respect to the member, the member's spouse, minor children and private companies, apart from those items particularly exempted under the *Act*. The exempted items would include income, assets, liabilities and financial interests (to mention a few) having a value of less than $1,000, the addresses of residential and recreational properties of the member, and the value of any assets, liabilities and financial interests.

Section 6 of the *Act* provides that a member shall not accept a fee, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office, except compensation authorized by law. Exceptions include gifts or benefits received as an incident of the protocol or social obligations that normally accompany the responsibilities of office. If the gift or personal benefit exceeds a value of $200, or the total received, directly or indirectly from one source in any twelve-month period exceeds $200, the member is required to complete Form 2, **Member's Statement of Gifts and Personal Benefits.** This form contains information as to the date the gift was received, the name and address of the donor, the nature and value of the gift or benefit and the circumstances under which the gift or benefit was received. If the gift or benefit was received indirectly from a source other than the listed donor, the Commission requires the name and address of the source. The member signs the Form, certifying that the gift or benefit was received as an incident of protocol or social obligation that normally accompanies the

responsibilities of office, and files it with the Commission.

The Public Disclosure Statement will also include information with respect to gifts or benefits which have been disclosed to the Commissioner.

## B. INQUIRIES

The interpretation of any rules at times involves difficulties for those whose obligation it is to comply with them. The nature of the rules, particularly the precise requirements of disclosure, will clearly raise from time to time difficulties of interpretation. Section 14 of the *Members' Conflict of Interest Act, 1988* makes provision for a member to seek the advice of the Commissioner as to the member's obligations under the *Act* and the Commissioner is empowered to make any inquiries he deems necessary and provide the member with a written opinion and/or recommendations. The opinion and recommendations are confidential and may only be released by the member or with the consent of the member in writing.

## C. REFERRED QUESTIONS

Essential to an effective enforcement procedure, is provision for the investigation of possible violations. This in turn depends upon a person or body instigating such an investigation. Section 15 of the *Act* provides for complaints from a member against another member; from the Legislative Assembly and from the Executive Council. There is no provision within the *Act* for receiving complaints from members of the public.

The greater vigilance which members bring to bear reflects the integrity of legislators; however, the danger of being overwhelmed with spurious complaints could obscure the genuine complaint. Some safeguards have been built into the *Act* and provide that complaints from one member regarding another member, must be set out in writing, stating the grounds for the belief and the nature of the contravention alleged. The Commissioner has suggested to the leaders of all parties in the Legislature that they might find it beneficial to have any proposed complaint vetted by the chair of the party caucus before being filed with the Commissioner. Inquiries from the Legislative Assembly must be by resolution, and inquiries from the Executive Council may only be with respect to the compliance of a member of the Executive Council.

Upon receiving a request from an individual member or the Legislative Assembly, the Commissioner may, upon reasonable notice to the member concerned, conduct an inquiry and elect to exercise the powers of a commission under Parts I and II of the *Public Inquiries Act.*

Where the request for an opinion is received from a member or the Legislative Assembly, the Commissioner's report is filed with the Speaker of the Assembly who presents the report to the Assembly. Where the request is received from

the Executive Council, the Commissioner reports his opinion to the Clerk of the Executive Council.

## D. PENALTIES

Where the Commissioner conducts an inquiry under the *Public Inquiries Act* following a request from a member or the Legislative Assembly, and finds the member has contravened the *Act*, or has refused to file a disclosure statement within the time provided, the Commissioner may recommend that the member be reprimanded or that the member's seat be declared vacant until an election is held in the member's electoral district.

The Assembly has six months to consider the Commissioner's report and may order the implementation of the recommendation or may reject it pursuant to sections 45 and 48 of the *Legislative Assembly Act*.

The Commissioner has no power under the *Act* to make recommendations if an inquiry is received from the Executive Council.

# STATISTICAL INFORMATION

## A. INQUIRIES

Section 14 of the *Act* makes provision for a member "to request that the Commissioner give an opinion and recommendations on any matter respecting the obligations of the member under this *Act*." The nature of these inquiries are strictly confidential between the member and the Commission; however, the statistical information which follows may be of assistance in appreciating the work of the Commission.

During the reporting period of this Annual Report, September 1, 1988 to December 31, 1989, the Commission has received 63 inquiries. The breakdown as to the source of these inquiries and the findings is as follows:

| Received From | No. Received | Conflict | No Conflict | Inquiries Outstanding |
|---|---|---|---|---|
| Member | 49 | 10 | 38 | 1 |
| Spouse | 11 | 0 | 11 | 0 |
| Trustee | 1 | 1 | 0 | 0 |
| Caucus | 2 | 0 | 2 | 0 |
| | 63 | 11 | 51 | 1 |

In all cases, with the exception of the one outstanding inquiry, the Commissioner responded with an opinion within a matter of days. In many cases, the member requires an immediate opinion, and the matter is handled verbally on the understanding that the member write to the Commissioner with the query as discussed. Upon receipt of the letter, the Commissioner confirms his opinion in writing.

## B. REFERRED QUESTIONS

As of December 31, 1989, no questions have been received or inquiries conducted under section 15 of the *Act*.

# FINANCIAL INFORMATION

## STATEMENT OF EXPENDITURE

**(for the seven month period ended March 31, 1989)**

| | Annual Budget | Expended |
|---|---|---|
| Salaries, Wages and Benefits | $107,050.00 | $ 19,489.00 |
| Transportation and communication | 3,750.00 | 1,288.00 |
| Services | 44,450.00 | 90,532.00 |
| Supplies and Equipment | 44,750.00 | 28,326.00 |
| | $200,000.00 | $139,635.00 |

## 1989/90 BUDGET

| | Annual Budget | Expended To Date |
|---|---|---|
| Salaries, Wages and Benefits | $ 86,100.00 | $ 40,858.18 |
| Transportation and communication | 5,000.00 | 567.08 |
| Services | 273,300.00 | 106,934.29 |
| Supplies and Equipment | 41,700.00 | 29,477.31 |
| | $406,100.00 | $177,836.86 |

## PROPOSED 1990/91 BUDGET

| | $ |
|---|---|
| Salaries, Wages and Benefits | 73,500.00 |
| Transportation and communication | 5,000.00 |
| Services | 226,000.00 |
| Supplies and Equipment | 52,500.00 |
| | $357,000.00 |

*It should be noted that all budget estimates to date have been based on an estimate of the number of formal inquiries which may be held in any given year. As no formal inquiries have been held to date, our lack of experience with the process causes us to be more speculative than usual.*